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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM T. ROWSE, BARRY M. INMAN, DEBRA L. MAYBERRY, DAVID G. PARK, HENRY T. UBLK, PAUL W. MASHNI, and ROBERT P. JACKSON

Appeal 2009-014365
Application 09/547,661
Technology Center 3600

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1, 4-5, 7-14, 38, 40, and 42-45 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We AFFIRM.

THE INVENTION

The Appellants' claimed invention is directed to a system for resolving a customer concern by using a digital image of the subject matter of the concern that is transmitted to a remote reviewer for approval to correct the concern (Spec. 5:24-6:2). Claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. A system for processing a product concern, the system comprising:
>
> a service station having a first computer and a removable integrated digital camera and scanner unit for capturing digital information including one or more photographs and identifying indicia related to the product concern wherein the captured digital information is automatically transmitted from the integrated digital camera and scanner unit to the first computer upon placing the integrated digital camera and scanner unit in electrical communication with the first computer within the service station, the first computer being configured to generate a claim approval request screen for receiving and displaying the digital information and identifying indicia related to the product concern;
>
> a reviewer station having a second computer for receiving the captured digital information from the service station and for determining how to address the product concern; and

a communication port for connecting the first computer at the service station with the second computer at the reviewer station for transmitting information related to the product concern including the captured digital information.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Bradbury	US 5,442,512	Aug. 15, 1995
Harvey	US 6,208,507 B1	Mar. 27, 2001
Bunte	US 6,330,975 B1	Dec. 18, 2001
Chainer	US 6,397,334 B1	May 28, 2002

Xactware; obtained from: http://web.archive.org/web/19980629105638/www.xactware.com/newsreleases/xnnewsrel.... (last visited Jun. 29, 2005) (hereinafter "Xactware").

The following rejections are before us for review: Claims 1 and 4 are rejected under 35 U.S.C. § 103(a) over Bunte and Xactware; Claim 5 is rejected under 35 U.S.C. § 103(a) over Bunte and Chainer; Claims 7-9, 13 and 14 are rejected under 35 U.S.C. § 103(a) over Bunte, Xactware, and Bradbury; Claims 10-12 are rejected under 35 U.S.C. § 103(a) over Bunte, Xactware, Bradbury, and Harvey; Claim 38 is rejected under 35 U.S.C. § 103(a) over Bunte and Xactware; and Claims 40 and 42-45 are rejected under 35 U.S.C. § 103(a) over Bunte, Chainer, and Xactware.

THE ISSUE

The issue with regards to all the rejections of record turns on whether the Xactware reference qualifies as a prior art "printed publication."

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:[1]

FF1. The Internet Archive Wayback machine on Sept. 29, 2005 disclosed an Internet publication date of June 29, 1998 for the Xactware reference. (Xactware reference citation from the Wayback machine).

ANALYSIS

The Appellants argue that the rejection of claims 1 and 4 is improper because the Examiner has not established that the Xactware reference is a "'printed publication'" (Br. 4). The Examiner obtained the Xactware reference from the Internet Archive Wayback machine on September 29, 2005 disclosing an Internet publication date of Jun. 29, 1998. The Appellants do not dispute the source of the Xactware reference (Br. 5) but argue that pages of the World Wide Web do not qualify either as "'public dissemination'" since they are "browsed" or as having "'public availability'" since the Wayback Machine was not available until October 2001 (Br. 6).

We agree with the Examiner. We direct the Appellants to the *Manual of Patent Examining Procedure* (MPEP) § 2128 (8th Ed., Rev. 8, Jul. 2010) which states in part that:

> An electronic publication, including an on-line database or Internet publication, is considered to be a "printed publication" within the meaning of 35 U.S.C. 102(a) and (b) provided the publication was accessible to persons concerned with the art to which the document relates. See *In re Wyer*, 655 F.2d 221, 227 … (CCPA 1981) ("Accordingly, whether information is printed, handwritten, or on

[1] *See Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

> microfilm or a magnetic disc or tape, etc., the one who wishes to characterize the information, in whatever form it may be, as a 'printed publication' * * * should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents.'" ([C]itations omitted).)....
> ....
>
> Prior art disclosures on the Internet or on an on-line database are considered to be publicly available as of the date the item was publicly posted*>. Absent evidence of the date that the disclosure was publicly posted, <if the publication <itself> does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b)*.

Here, the Internet Archive Wayback machine disclosed an Internet publication date of June 29, 1998 for the Xactware reference (FF1) which shows that the document was "publically available" on that date. Publication of the Xactware reference on the Internet on June 29, 1998 has been shown (FF1) and is sufficient to show the reference was publically available to meet the argued requirement to be a "printed publication." For these reasons the rejection of record for claims 1 and 4 is sustained. The Appellants have provided the same arguments for the remaining claims and the rejection of these claims is sustained for these same reasons.

DECISION

The Examiner's rejection of claims 1, 4-5, 7-14, 38, 40, and 42-45 is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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